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Attorneys for Defendant, Mike Alexander

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LANDON S. NEILSON
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BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary
of Employers Mutual Plans,

Plaintiff,

vs.

James Lee Graf, et al

Defendants.

CASE NO. CV-N-03-0119-HDM-VPC

DEFENDANT MICHAEL ALEXANDER'S PRELIMINARY REPORT

Defendant, MICHAEL ALEXANDER, submits this as his Preliminary Report setting a "preliminary understanding of the facts involved in the litigation and the critical fact and legal issues." A list of affiliated companies and counsel and a list of related cases, to the extent known by this Defendant, is also included.

The spiraling cost of healthcare and health insurance has unfortunately resulted in several complex and convincing criminal enterprises. This lawsuit arises from the criminal enterprise of several individual and entity Defendants (collectively the "RICO Defendants") where retail insurance brokers and individual insureds were duped into purchasing virtually non-existent health insurance. Millions of dollars in unpaid health insurance claims has been left behind in the wake of the RICO Defendants' health insurance scheme.

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1 At least, \$7.3 million has not been accounted for¹ in the scheme.

2 The RICO Defendants used aggressive marketing techniques to sell insurance policies
3 to local insurance agents. To make that push, it engaged two middleman companies,
4 American Benefit Society and Associated Agents of America. According to Employers
5 Mutual's receiver, Tom Dillon, Associated received \$959,574 worth of commissions on the sale
6 of the Employers program. For Associated that amounted to 15% commissions.

7 Defendant ALEXANDER is a retail insurance producer based in the Houston, Texas
8 area. Defendant ALEXANDER sold health insurance plans through the American Benefit
9 Society, Insurance Advisers, and AFM Insurance Group. Defendant ALEXANDER received
10 compensation in connection with policies sold to James Casmir, Joan Van Wicklen, Rosa
11 Villobos, and Simon Segari. In connection with the sale of any policy at issue in this litigation,
12 Defendant ALEXANDER at all times acted reasonably and according to the standard of care
13 applicable to retail insurance producers conducting business in the Houston, Texas area.

14 On or about December 21, 2001, the Secretary of the United States Department of
15 Labor filed a lawsuit in the United States District Court for the District of Nevada alleging
16 violations of Title 1 of ERISA, 29 USC 1001 et seq. An Order was obtained appointing the
17 Independent Fiduciary herein to marshall all assets and to "pursue all legitimate claims"
18 On or about March 3, 2003, Plaintiff filed the Complaint herein against various classes of
19 Defendants and entities including Defendant ALEXANDER. The Complaint asserts claims for:
20 (a) Breach of Contract; (b) Insurance Producer Negligence alternatively captioned Malpractice;
21 and (c) Breach of Warranty of Authority. It is Plaintiff's position that the Insurance Producer
22 Defendants improperly relied upon the letters of binding authority provided by Employers
23 Mutual on the letterhead of various established health care providers. Defendant
24 ALEXANDER maintains that he did not deviate from the standard of care and committed no
25 acts or omissions actionable against him.

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^{1/} See <http://www.fortune.com/fortune/print/0,15935,446267,00.html>

1 **Preliminary Statement of Critical Factual Issues**

2 A primary factual issue involves what the individual Defendant Insurance Producers did
3 or failed to do in connection with the marketing and/or sale of insurance policies. The
4 Complaint alleges that there were a number of "red flags" present at the time policies were
5 offered and Defendant knew or should have known that there was a ongoing criminal
6 enterprise.

7 The second primary issues involves the amount of damages being claimed by Plaintiff
8 on behalf of any individual insured.

9 Given the preliminary nature of this report, it is not possible at this time to identify all
10 other issues.

11 **Statement of Preliminary Legal Issues**

12 At this point, identification of all legal issues is not possible. However, some of the
13 preliminary legal issues include:

14 1. Whether Plaintiff has standing to prosecute the action against the individual
15 retail insurance agents and brokers.

16 2. Whether the Federal Court has jurisdiction over the claims against the individual
17 retail insurance agents and brokers.

18 3. Whether the claims against the individual retail agents and brokers are
19 preempted by ERISA.

20 4. Whether the employees whose medical expenses were not paid have a claim
21 for breach of contract against the insurance agents and brokers with whom the employees had
22 no privity of contract.

23 5. Whether the insurance agents and broker owed a legally recognized duty to
24 employees whose claims were not paid.

25 6. Whether all or some of the claims paid by Plaintiff are barred by the statute of
26 limitations applicable to any such claim.

27 7. Whether damages were properly mitigated.

1 **Counsel's Statement of Affiliated Companies**

2 Counsel is unaware of any affiliated companies.

3 **List of Related Cases**

4 Counsel is unaware of any related cases.

5 Dated this 18th day of August, 2003

6 LIPSON, NEILSON, SELTZER & GARIN L.L.C.

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6 d/b/a ABM Insurance & Benefit Services

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10 of Employers Mutual Plans,)
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14 Defendants.)

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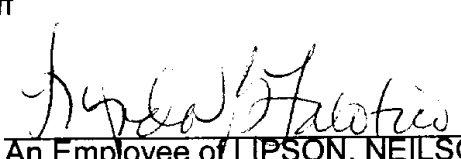
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16 **CERTIFICATE OF MAILING**

17 I hereby certify that on the 18th day of August, 2003, I deposited in the United
18 States mail, a true and correct copy of Defendant, Mike Alexander's, Preliminary
19 Report postage prepaid, and addressed as follows:

20 Robert L. Brace, Esq.
21 Hollister & Brace
22 1126 Santa Barbara Street
Santa Barbara, CA 93101

23 Richard W. Horton, Esq.
24 Suite 1100 Bank of America Plaza
25 50 West Liberty Street
Reno, Nevada 89501

26 Attorneys for Plaintiff

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An Employee of LIPSON, NEILSON, SELTZER & GARIN, LLC.

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